IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

1. S.B. Civil Sales Tax Revision No.208/2000

Assistant Commissioner, Commercial Taxes, Bhilwara
vs.
Reliance Industries Limited, Bhilwara.

2. S.B. Civil Sales Tax Revision No.519/2002

Assistant Commissioner, Commercial Taxes, Bhilwara
vs.
Reliance Industries Limited, Bhilwara.

Date : 9.2.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr. Sangeet Lodha, for the petitioner.
Mr. Arun Bhansali, for the respondent.

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Heard learned counsel for the parties.

The only question involved in these two revision petitions is whether polyester filament yarn is same as polyester filament texturised yarn ?

The assessing authority by orders dated 13.8.1993 and 10.7.1996 in these two matters held that polyester filament yarn and polyester filament texturised yarn

are two different commodities. The assessing authority took into consideration the bill issued by the assessee wherein the assessee mentioned “texturised yarn produced out of duty paid filament yarn exempted vide notification no.178/1983. On the basis of the said language used by the assessee, the assessing authority found these two things different. The assessee preferred appeals against the aforesaid orders before the Deputy Commissioner (Appeals), Commercial Taxes, Ajmer who allowed the appeals and held that polyester filament yarn is the same as polyester filament texturised yarn. The Revenue preferred further appeal before the Tax Board, Ajmer which were dismissed by the Tax Board by the impugned orders dated 10.8.1999 and 18.10.2001. The Tax Board relied upon the opinion given by The Silk and Arts Silk Mill Research Association dated 27.7.1994 and certificate issued by Chartered Textile Technologist dated 16.6.1994 and held that polyester filament yarn and polyester filament texturised yarn are the same and, therefore, the matter is covered under notification no.741 dated 2.3.1989 and, therefore, the orders of the assessing authority are wrong.

Learned counsel for the revenue submitted that firstly the assessee itself treated the two things different which is apparent from the bills issued by

the assessee and which was considered by the assessing authority and secondly, the appellate authority as well as Tax Board did not examine whether the two commodities are commercially known different commodities. It is also submitted that merely on the basis of certificate issued by two different bodies, it cannot be inferred that polyester filament yarn and polyester filament texturised yarn are same. It is also submitted that merely because the raw material used in manufacturing the two commodities is the same, therefore, the final product shall also be the same.

Learned counsel for the respondent/assessee vehemently submitted that it is clear from the language used in the notification dated 2.3.1989 (as amended by another notification dated 12.9.1989) that different yarns may be of polyester, polymer or polypropylene have been made covered under notification no.741 dated 2.3.1989. It is also submitted that two commodities differently named polyester filament yarn and polyester filament texturised yarn are products out of same raw material and are used for the same purpose which is made clear by the certificates issued by The Silk and Arts Silk Mill Research Association dated 27.7.1994 and certificate issued by Chartered Textile Technologist dated 16.6.1994. The revenue did not produce any opinion of the expert nor produced any evidence to show

that these two commodities are differently known in the common parlance by the person dealing in these commodities or by a laymen. It is also submitted that polyester filament yarn is texturised to give desired effect and it has been made clear that the polyester yarn may be polyester filament yarn or polyester filament texturised yarn. For manufacturing these yarns, draw twisting machine or draw texturised machines are used but the end product remains the same as the yarn of polyester and quantitatively it is a filament. It is also submitted that the appellate authority has considered the opinions given by the expert bodies and there is no material against the said opinions. Therefore, in fact, the question of fact has been decided by the appellate authority and tax board on the basis of evidence and, therefore, no question of law is involved in this appeal.

I considered the submissions of learned counsel for the parties and perused the facts of the case.

The relevant notification no.741 dated 2.3.1989 reads as under :-

> “S.No.741 : F.4(72)FDGr.IV/81-8 dated 2.3.1989
> S.O.252.- In exercise of the powers conferred by S.8(5), CST Act, 1956, and in partial modification of F.4(8)FDGr.IV/87-18 dated 5.3.1987 (S.No.665), the State Govt. [.2.] hereby directs, with

> immediate effect, that the tax payable under sub-sections (1) and (2) of the said section by any dealer having his place of business in the State, in respect of the sale by him from any such place of business in the course of inter-State trade or commerce of [polyester filament yarn/nylon filament yarn, polymer chips and polypropylene filament yarn] shall be calculated at the rate of 0.75% on the condition that the claim regarding partial exemption under FD notfn No.4(72) FDGr.IV/81-18 dated 6.5.1986 (as amended from time to time) (S.No.625) shall not be made and allowed."

It is clear from the words used in the notification that by this notification, yarn, may it be of polyester or polymer or polypropylene have been included under the notification. It is not in dispute that the yarn in question is made of polyester and it is filament. It is also not in dispute that two expert bodies have certified that polyester filament yarn and polyester filament texturised yarn are the same. The Revenue could not rebut this opinion.

So far as contention of learned counsel for the petitioner/revenue that the assessee itself issued bill containing the language that texturised yarn, product out of duty paid filament yarn is exempted by the notification dated 1.7.1983 is concerned, by this language itself, it cannot be inferred that the assessee intended to convey or the purchaser of the

goods understood that the two things are different. Not only this, it appears from the order of the assessing authority that the assessing authority has mechanically considered the language used in the bill and presumed that since it has been mentioned that the assessee claimed exemption under notification no.178/1983 on sold commodity, therefore, two commodities are different but without there being any further evidence. Otherwise also, if the said evidence which was relied upon by the Revenue is considered with the opinion given by two expert bodies, this Court is not inclined to hold that the opinion of the expert bodies can be discarded because of the language used in the bill while selling the goods by the assessee and particularly when, it is not made clear that for what purpose, such language was used in the bill.

In view of the above discussion, I do not find any merit in these revision petitions and the same are hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya